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**Strangulation Prosecution: Avoiding
Confirmation Bias & Incorporating Technology**

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Strangulation Prosecution: Avoiding Confirmation Bias & Incorporating Technology

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1

Goals & Objectives



1. Discuss how to combat common juror misconceptions about strangulation.
2. Identify the "confirmation bias" trap prosecutors can fall into when reviewing strangulation cases.
3. Expand the use of available technology to defeat both jurors' and your own preconceived expectations.

2

A.R.S. § 13-1204(B): Strangulation

- Defendant committed an assault by either:
 - Intentionally, knowingly or recklessly causing any physical injury to another person,
 - Intentionally placing another person in reasonable apprehension of imminent physical injury or
 - Knowingly touching another person with the intent to injure the person
- AND Defendant intentionally or knowingly impeded the normal breathing or circulation of blood of another person...
 - By applying pressure to the throat or neck OR
 - By obstructing the nose and mouth
 - Either manually or through the use of an instrument
- AND Defendant and victim were in a DV relationship.

3

"Choking" vs. "Strangulation"

Choking: occurs when an object gets into the airway and blocks air flow internally.



Strangulation: occurs when external pressure is applied to the blood vessels and/or air passages.



Victims often say "choking" when they mean "strangulation."

4

These cases are important!

- Strangulation cases are *homicide prevention*.
- Victims of non-fatal strangulation are:
 - 7x or 800% more likely of becoming a homicide victim.
 - 6x or 700% more likely of becoming an attempted homicide victim.
 - 43% of women who were murdered in domestic assaults were victims of non-lethal strangulation in the past year.
 - Glass et al. (2008). Non-fatal Strangulation is an Important Risk Factor for Homicide of Women, *The Journal of Emergency Medicine*, 35(3), 329-335.

But, these cases are hard!

5



If only all our trials were this easy...

6

Hurdles to Successful Prosecution

- Poor or minimal initial police investigation
- Uncooperative victims/witnesses
 - Recantation
 - Minimization of the violence
 - Credibility
- Lack of independent corroboration
 - No visible injuries in 50% of cases
 - No other witnesses or only non-verbal children
- Conflicting statements from suspect
 - Self-defense
 - Mutual combat
 - Admissions to lesser violence
- Juror expectations



7



8



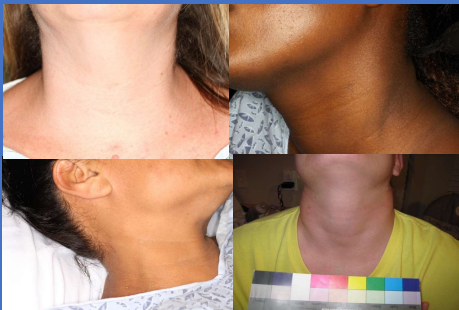
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Jurors expect to see this...



10

But usually we have this...



11

Jurors Want Physical or Forensic Evidence

- In 2008, over 1,000 prospective jurors were surveyed regarding what evidence they expected to see if they were picked for jury duty:
- 46% expected to see some kind of scientific evidence in *every* criminal case.
- 22% expected to see DNA evidence in *every* criminal case.
- 36% expected to see fingerprint evidence in *every* criminal case.
- 32% expected to see ballistic or other firearms laboratory evidence in *every* criminal case

National Institute for Justice Journal No. 259, March 2008, D. Shelton, T. Kim, and G. Barak

12

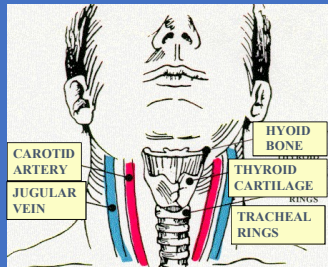
Educate the Jury: Physical Injury

- Lack of physical injury means NOTHING!
- Forensic nurses and some detectives can testify to this.
- San Diego Strangulation Study, 2013.
 - Most victims lacked physical evidence of being strangled.
 - 50% of cases, no visible injury
 - 35% of cases, injury too minor to photograph
 - 15% of cases had injuries significant enough to photograph
 - 3% of victims sought medical attention
- It is possible to strangle someone to death without leaving any external marks.

13

Educate the Jury: Mechanics of Strangulation

- Jugular vein: brings deoxygenated blood from head back to heart.
- Carotid artery: supplies head and neck with oxygenated blood.
- Trachea: windpipe.
- Strangulation can block all three—preventing blood and airflow to the brain.



💡 TECH TIP: Help your expert testify by providing a good demonstrative exhibit of the structures of the neck.

14

Educate the Jury: Mechanics of Strangulation

- 4.4 pounds of pressure minimum can close the jugular veins.
- 11 pounds can close carotid arteries.
- 30 pounds can close the trachea.

- This isn't a lot of pressure!
- To put this in perspective...
 - It only takes 4-6 pounds of pressure for a trigger pull.
 - It only takes 22 pounds of pressure to open a can of soda.



💡 TECH TIP: Provide real world analogies or other examples to your jury to illustrate the medical information.

15

Educate the Jury: Physical Injuries


- Consider victim's description of the strangulation—do the injuries match?
- Look for defensive injuries.
- Rare to have extreme bruising/marks.




16

Educate the Jury: Physical Injuries

- Injuries go beyond bruises to the neck
- Petechiae: burst blood vessels from constriction of blood flow
 - NOTE: Lack of petechiae does not mean victim was not strangled.
- Hemorrhages to eyes


 **TECH TIP:** These injuries are not always intuitive, so make sure your forensic nurse or other medical expert explains the mechanism of injury.

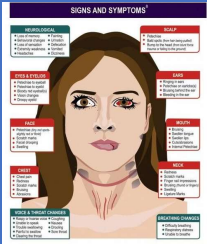


17

Educate the Jury: Signs & Symptoms

- Loss of consciousness
- Involuntary urination/defecation
- Dizziness, nausea, vomiting, headache
- Difficulty breathing
- Voice changes: hoarseness, change in pitch, raspy voice, coughing
- Throat changes: painful swallowing, clearing of throat, drooling, external throat pain
- Breathing changes: difficulty breathing, hyperventilation, trouble catching breath, coughing
- Vision/hearing changes: blurry vision, fuzzy hearing

 **TECH TIP:** Use body camera footage of interview to show victim coughing, raspy voice, dizziness, etc.



18



19

Hurdles to Successful Prosecution

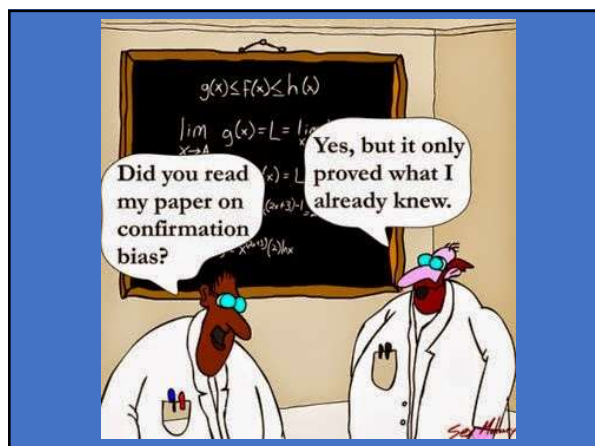
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20

Confirmation Bias

- The tendency to search for, interpret, favor, and recall information in a way that confirms one's preexisting beliefs or hypotheses.
- People are twice as likely to seek information that confirms what they already believe than they are to consider evidence that would challenge those beliefs.

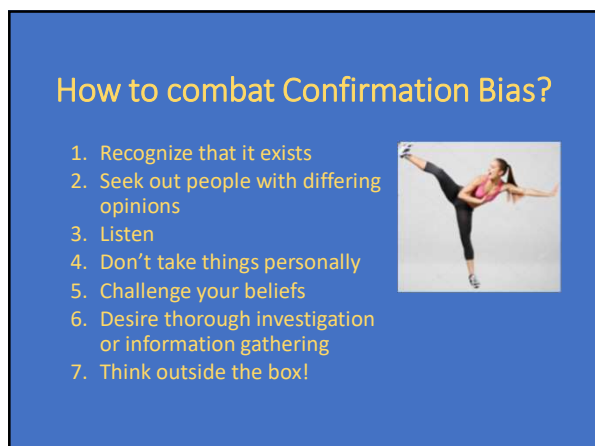
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22



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24

Case Study #1

- Delayed report
- No witnesses
- Minimal injuries
- “Difficult” victim
- Defendant denied assault and presence at scene


• Would you charge this?



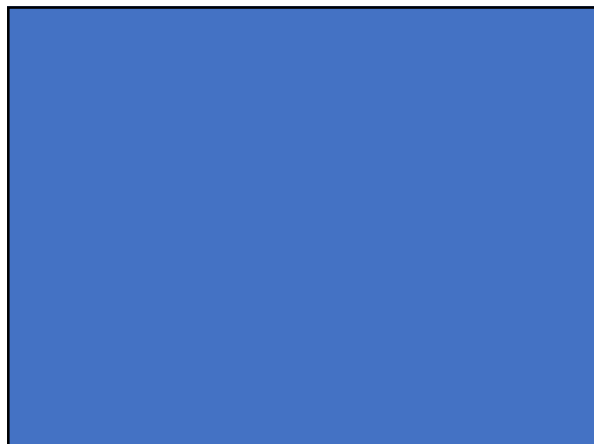
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Case Study #1 (continued)

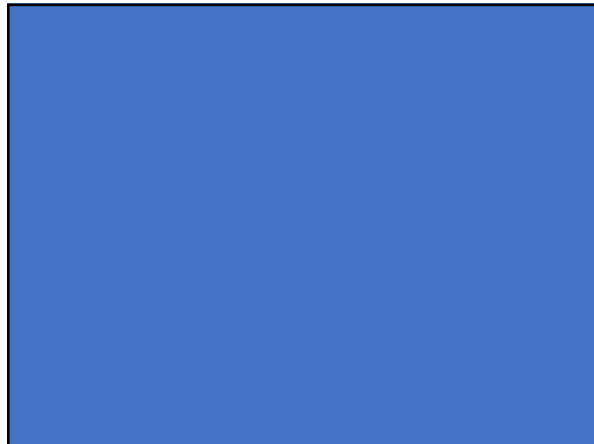
- How could we make this case better?
 - Can any witnesses corroborate the rest of victim’s statement?
 - Even if they did not witness the strangulation itself.
 - Can any roommates, friends, neighbors, place Defendant at scene?
- Did Defendant send text messages after the incident?
- Did Defendant make any posts to social media?
- Is victim willing to do a confrontation call (prior to arrest)?
- Did Defendant call the victim from jail (post arrest)?

 **TECH TIP:** Always check social media, phone records, jail calls. Defendants will tell their victims anything to get out of trouble!

26




27



28

Case Study #2

- Minimal or poor police investigation
- Delayed report & change of location
- Memory loss/inability to give cohesive narrative
- History of past unreported incidents
- Suspect not located at scene but admits to being there
- Minimal injuries
- Alcohol Use



Would you charge this?

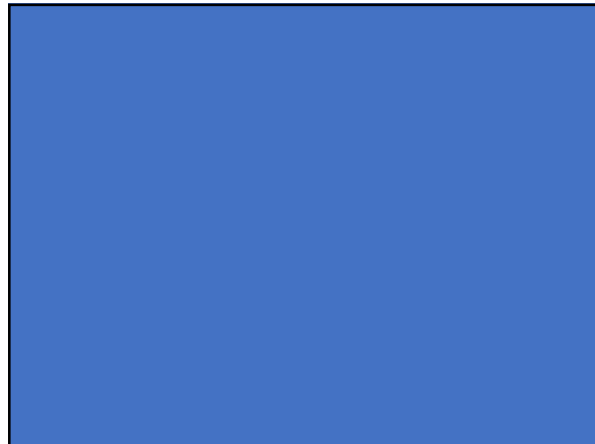
29

Case Study #2 (continued)

- What could help you make a charging decision?
 - Interviews of other witnesses?
 - Proof suspect was at bar?
 - Text messages?
 - Social media?
 - Confrontation call?
 - Speak with their friends who were present?
 - Proof she was working that night?

TECH TIP: Think digital! To place your Defendant at the scene, look for bank records, receipts, social media check-ins, Yelp reviews, etc!


30




31

More Tips: Minimal Corroboration

- Combat investigation issues by acting **FAST**
 - Furthers are your friend.
- Locate all potential witnesses.
 - 911 caller
 - Children over 5
 - Other adults in home
 - Neighbors
 - Friends contacted after assault
 - Person who took victim to FNE
 - Paramedics, ER doctors, etc.




 **TECH TIP:** Just because they weren't interviewed that night doesn't mean they can't be interviewed now!

32

More Tips: Minimal Corroboration

- Jurors like **STUFF**
 - Appeal to different learning styles
 - Combat boredom!
- Be creative!
 - Physical evidence from scene—broken phone, wet pants, etc.
 - Photographs of scene.
 - Maps, charts, diagrams.
 - Audio/video: 911 call, voicemail messages, body camera footage, social media posts, jail calls, jail video visits
 - Blow up those text messages!



ANYONE WHO'S TROUBLED BY VIEWING THE VICTIM'S CORPSE IS FREE TO LEAVE THE COURTROOM AT THIS TIME!

33

Combating Victim Issues

• “Cooperative” victim

- Never expect cooperation.
- Pretrial preparation is key.
- Details, details, details.
 - Details increase victim's credibility.
- What did the victim hear, see, smell, feel, during assault?
- What was the victim thinking?
- How did the victim feel after?
 - Physical symptoms.
- Exactly how did the strangulation occur?
- What is the victim's response to suspect's story?



34

Combating Victim Issues (continued)

• Uncooperative victim

- Just need to get them to court!
 - Strategies
- Be prepared for anything:
 - Memory issues
 - Real or feigned?
 - Minimizing
 - Recanting
 - Hostile witness
- Impeach, impeach, impeach!
- Use body camera footage to show demeanor/symptoms.
- Don't be afraid of recanting victims!
 - Case agent or blind expert can help explain this.



35

Combating Victim Issues (continued)



• Missing victim

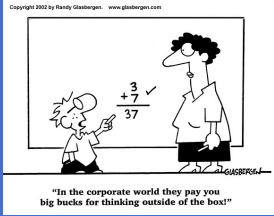

- Can you prove it without the victim?
 - 911 call—is it coming in?
- Witnesses
 - Did anyone see the actual strangulation?
 - Can anyone identify suspect?
- Statements to forensic nurse
 - Is your FNE coming in?
- Forfeiture by wrongdoing
 - Get those jail calls!
- Pretrial litigation is key.

36


Think Outside the Box

- ✓ Defeat Confirmation Bias
- ✓ Serve Justice
- ✓ Encourage Advancement

- ✓ Critically Analyze Cases
- ✓ Educate your Jurors
- ✓ Protect Victims

37



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38
